

ADVISORY OPINION NO. 2006-01

Issued on March 2, 2006 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County Solid Waste Authority asks if it can establish a program to reward municipal, county and state law enforcement officers who report the location of illegal dump sites to the Authority.

FACTS RELIED UPON BY THE COMMISSION

The requester is a County Solid Waste Authority. In accordance with the West Virginia Code, it is governed by a five member volunteer board. (W.Va. Code § 22C-4-1 *et. seq.*). It employs one full-time employee and one part-time office employee.

Solid waste authorities are charged with the responsibility of developing a comprehensive litter and solid waste control plan. As part of this plan authorities are required to coordinate with the division of highways, and other local, state and federal agencies in the control and removal of litter and the cleanup of open and unpermitted dumps. (W.Va. Code § 22C-4-8(12)). In order to locate and cleanup illegal dumps, the requester wants to sponsor a contest for law enforcement officers in its county. The contest would be open to city police officers, county deputies, Division of Natural Resource Officers and State Police Officers. The purpose of the contest would be to reward law enforcement officers who report the location of illegal garbage dumps to the Solid Waste Authority in order that the Authority can in turn take action to clean up the site. The Authority would keep track of the number of reports received over a period of time. At the conclusion of a designated period, it would award a first, second and third prize to officers who make the most reports. The prizes would consist of gift certificates.

Solid Waste Authorities have limited enforcement powers. If a citizen is violating mandatory trash disposal requirements, then the Authorities are statutorily empowered to refer violations to the division of environmental protection or to the appropriate law enforcement authorities. (W.Va. Code § 22C-4-23(16)). There are criminal penalties in West Virginia for the unlawful disposal of trash or litter. (W.Va. Code § 22-15A-4). Based upon information and belief, neither local or state law enforcement agencies have a statutory duty to make a report to a local solid waste authority if an unpermitted dump is located.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W.Va. Code § 6B-2-5(b) reads:

(b) *Use of public office for private gain.* -- (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business

purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W.Va. Code § 6B-2-5 (c) reads:

(c) *Gifts.* -- (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: *Provided*, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: *Provided, however*, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

W. Va. Code, § 6B-2-5(h)(5) reads:

A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public responsibilities.

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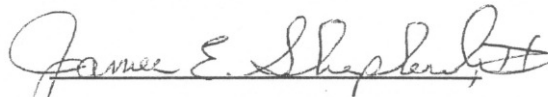
As a general rule law enforcement officers are prohibited from receiving rewards from third parties for performing acts which are in the scope of their normal duties. A 1934 West Virginia Attorney General opinion held that: "[S]ince it is the duty of constables and policemen to assist in the enforcement of criminal laws of the state, we are of the opinion that constables and policemen are not entitled to any other reward or compensation for making such arrests than such as is fixed and allowed by law." 35 W.Va. Op. Atty. Gen 492 (1934).

The question posed by the requester differs in that the Authority is inquiring whether a public employer or agency, as opposed to a private individual, may establish a rewards program for law enforcement officers. The Ethics Act prohibits a public employee from receiving compensation for providing information or services that he or she is required to provide in carrying out his or her public responsibilities. However, this portion of the Act should not be construed as prohibiting the

establishment of a valid rewards program by a public employer or agency. A rewards program does not constitute the use of public office for private gain because the recognition of exemplary performance by public employees serves a public purpose. For instance, State or local government entities may recognize an employee of the month.

While there is nothing in the Ethics Act which prohibits a public employer from establishing a rewards program, the present case is distinguishable as it involves a reward to law enforcement officers for reporting illegal dump sites. In the opinion of Commission, there is an established precedent in West Virginia against law enforcement officers accepting rewards for performing duties which are related directly or indirectly to their law enforcement positions. Further, one of the stated purposes of the Ethics Act is to "[M]aintain confidence in the integrity and impartiality of the governmental process..." W.Va. Code §6B-1-2(b). In light of the established precedent against law enforcement officers receiving rewards, and as the proposed program may create the appearance of impropriety, the Commission finds that the proposed program violates the spirit and intent of the Ethics Act and should not be implemented.

This advisory opinion is limited to questions arising under the Ethics Act, W.Va. Code § 6B-1-1, *et. seq.*, and does not purport to interpret other laws or rules. In accordance with W.Va. Code §6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.


Commission Chairman